

# LEGISLATIVE RESEARCH COMMISSION

REPORT  
TO THE  
1977

GENERAL ASSEMBLY OF NORTH CAROLINA



## FIRE AND CASUALTY INSURANCE RATE REGULATION

RALEIGH, NORTH CAROLINA

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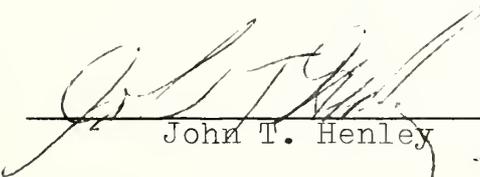
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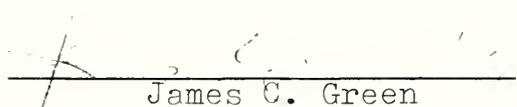
TO THE MEMBERS OF THE 1977 GENERAL ASSEMBLY:

The Legislative Research Commission herewith reports to the 1977 General Assembly of North Carolina on the matter of Fire and Casualty Insurance Rate Regulation. The report is made pursuant to House Bill 296 of the 1975 General Assembly.

This report was prepared by the Legislative Research Commission Committee on Fire and Casualty Insurance Rate Regulation, and it is transmitted by the Legislative Research Commission to the members of the 1977 General Assembly for their consideration.

Respectively submitted,

  
\_\_\_\_\_  
John T. Henley

  
\_\_\_\_\_  
James C. Green

Co-Chairmen

Legislative Research Commission



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## INTRODUCTION

The Legislative Research Commission, created by Article 6B of Chapter 120 of the General Statutes, is authorized pursuant to the direction of the General Assembly "to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" and "to report to the General Assembly the results of the studies made," which reports "may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations." G.S.120-30.17. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and consists of five Representatives and five Senators, who are appointed respectively by the Co-Chairmen. G.S.120-30.10(a).

At the direction of the 1975 General Assembly, the Legislative Research Commission has undertaken studies of twenty-nine matters, which were arranged into ten groups according to related subject matter. See Appendix A for a list of the Commission members. Pursuant to G.S.120-30.10(b) and (c), the Commission Co-Chairmen appointed committees consisting of legislators and public members to conduct the studies. Each member of the Legislative Research Commission was delegated the responsibility of overseeing one group of studies and causing the findings and recommendations of the various committees to be reported to the Commission. In addition, one Senator and one Representative from each committee were designated Co-Chairmen. See Appendix B for a list of the committee members.

Section 7 of Chapter 851 of the 1975 Session Laws directed the Legislative Research Commission to "make a thorough and comprehensive study of all aspects of fire and casualty rate regulation in North Carolina and in other states in the Union, "including an evaluation of the rate impact of the following systems of rate regulation: prior approval, file and use, open competition, and rate making utilizing the concept of return on invested capital." In addition, the Legislative Research Commission was directed to evaluate "the advantages and disadvantages of establishing an Insurance Commission consisting of three or more members with adequate supporting staff which shall be invested with the authority to determine and fix fire and casualty rates for use in North Carolina." See Appendix C. House Joint Resolution 1214, which was introduced during the 1975 General Assembly and later incorporated into Chapter 851 as Section 7, recited in its preamble that in addition to the normal regulatory lag caused by the statutory rate making and approval procedures for fire and casualty insurance, there have been in recent years inordinate delays in rate making and approval due to extended litigation and an emergence of problems resulting from the regulatory lag which commands the attention of the Commissioner and Department of Insurance; and as a substitute for devising and implementing stopgap solutions to meet recurring problems resulting from the regulatory lag, the General Assembly might more effectively serve the public

by reexamining the effectiveness of the present system of fire and casualty insurance rate regulation with a view toward implementing fundamental reforms.

#### COMMITTEE PROCEEDINGS

The organizational meeting of the Committee on Fire and Casualty Insurance Rate Regulation was held on October 17, 1975. After the committee members discussed the scope of their study (as contained in Section 7 of Chapter 851) and identified some of the problems of the present fire and casualty insurance rate-making procedures prescribed by the General Statutes, they heard representatives from the North Carolina Fire Insurance Rating Bureau explain the functions and purpose of the Bureau and a brief history of the rate filings made with the Department of Insurance by the Bureau since January, 1973. It was decided that the committee would procure and collect information from other jurisdictions concerning their rate regulations and experiences with those procedures.

The second meeting was held on October 24, 1975. Issues and subjects considered by the committee were the creation of a comprehensive insurance rating bureau, the creation of a commission to pass on and approve rate filings, the auditing problems encountered by the Department of Insurance in the regulatory process, the regulatory power of the Commissioner of Insurance, "prior approval" as opposed to "file and use" rate-making systems, the consequences of inadequate rates and

failure of prompt action on requests for rate changes, alternatives to jury trials in the resolution of controversies and claims, and limitations on general liability and automobile insurance losses.

It was pointed out by one guest that in his opinion the critical areas in regulation are in the protection of the solvency of companies and in the availability of insurance markets -- not in specific rates themselves as long as those rates meet general standards of adequacy and reasonableness under the law as we now have it. The difficulty in obtaining prompt action on rate filings under the present system of prior approval rate making was noted, and concern was expressed that this difficulty might be decreased under a system of file and use or open competition rate making.

Discussion at the third meeting on November 21, 1975, centered around the aspects of open competition rating laws. The committee looked at other states' laws and experiences and was told that the states with the open competition rating systems have been fairly complaint-proof. The committee also discussed any possible impact of open competition rating systems on independent agents and assigned risk plans. The committee was informed that a survey conducted by Louis Harris and the Wharton School of Finance (University of Pennsylvania) found that consumers would have to realize a premium price differential of at least 15% before they would change insurance agents. The committee was also told that a New York Department of Insurance Study indicated that most of

the consumers there were in the assigned risk plan because they did not shop around enough for their insurance coverage. To help remedy this situation the New York Department of Insurance publishes shopping guides which list the various insurance companies and their rates. It was stated that one of the reasons the State of New York went to open competition rate-making was the belief that such a system would allow the Department of Insurance, which is one of the largest in the nation, to concentrate on the job of regulation instead of rate matters. The committee members indicated that they felt that further study of the different rate regulation systems in the states was needed; and that more detailed information about the North Carolina rate regulation structure should be obtained with a view toward correcting the inadequacies of this system before recommending an alternative rating system for the State.

The committee held two consecutive meetings on December 4 and 5, 1975, and heard more from insurance industry representatives, the Office of the Attorney General, and the Commissioner of Insurance. The experience in Georgia of the transition from the cartel system of rate making to a file and use system was described to the committee. Some of the problem areas in North Carolina were discussed, to wit: the regulatory lag in setting rates, the inability to provide innovations in policy coverage, and the inflexibility and lack of responsiveness in North Carolina's present system to the needs of the people. There was also discussion of the state and federal antitrust

laws and their applicability to the insurance industry. It was noted that although the federal McCarran-Ferguson Act exempts the insurance industry rating bureaus from the federal antitrust laws, the state antitrust laws apply to the insurance companies if they have combined to coerce or intimidate the rate-making body. It was suggested that the antitrust program in the Attorney General's office would probably need more staff support if the rating system was changed from cartel to file and use, primarily because the Commissioner of Insurance would no longer have the prior approval regulatory powers he now has.

The concept of an insurance rating commission was again discussed as an alternative to a single regulator. One industry representative's opinion was that a rating commission of three or five members would be more efficient than a one-man regulator because of the tremendous workload and complex problems existing within the fire and casualty insurance industry. He further noted his belief that some system should be devised whereby rates can respond rapidly to today's changing economic conditions.

The next item discussed was House Bill 100, which had been introduced during the 1975 General Assembly to establish file and use rate regulation in certain small casualty insurance lines where rate uniformity is not required.

Automobile insurance was the next matter for discussion. The operations of the Automobile Rate Administrative Office and the Compensation Rating and Inspection Bureau were described

to the committee. Noted was the fact that automobile physical damage was under the jurisdiction of the Fire Insurance Rating Bureau and automobile liability was under the Rate Administrative Office. The historical delineation between the two lines exists no more, it was stated; and it was further suggested that physical damage should fall with the Rate Administrative Office. Other suggestions for improvement were more competition in rate making in all lines of insurance with the possible exception of workmen's compensation insurance, a specific time limit for action on rate filings and other kinds of filings submitted to the Department of Insurance, the establishment of a commission to have rate-making authority, and the repeal of 1975 legislation concerning age and sex in automobile insurance rating. It was added that the Rate Administrative Office's Budget for legal fees for rate filing litigation and appeals in 1975 was \$61,000; ten years ago it was negligible.

Open competition was the next topic for discussion. Some insurance industry representatives have indicated that the American system of competition was the best regulator in the marketplace for any product or service and have recommended it for all lines of insurance. When asked what would happen in North Carolina if open competition was immediately adopted, one representative stated that North Carolina would probably react as other states have: At first there would be a flurry of movement because the rates have been depressed for years; after twelve to eighteen months there would be a movement up in rates which would subsequently level off; this rate increase,

however, would be well within a reasonable amount and keyed to economic factors.

The Commissioner of Insurance spoke to the committee next. He stated that he didn't feel that the rating commission approach was in the best interest of the people because it would further remove government from the people. He added that the present system is more responsive to the people because the orders of the elected Commissioner must be based on findings of fact and conclusions of law which are supported by the evidence, and those orders are subject to review by judges and justices elected to the trial and appellate courts of the State. He stated that the solution to the time lag and other problems in rate approval would be to provide his department with one or more experienced actuaries. The Commissioner also stated that a file and use rating system is not in the best interest of the people; and that open competition is after-the-fact regulation if any regulation at all, because the Commissioner would have the burden of proving rates unreasonable after they are in effect. As it stands now with prior approval, the burden is on the insurance companies to prove the reasonableness of an increase in rates.

Another industry representative itemized his recommendations for insurance companies and regulators. As for the regulators, they should recognize that the traditional trend factors formerly used in rate-making no longer apply in an inflation-prone economy, and that they can accept other trend factors published by government agencies and by persons outside the

insurance business. Second, regulators should act properly to approve warranted rate increase requests. Third, regulators should modernize and streamline company examination procedures with an eye towards evaluating current strength and solvency, rather than towards pricing of the insurance product or determining what shape a given company was in several years ago. Fourth, they should recognize the competitive pressures that are still at work and should place more reliance on the marketplace as an arbiter of insurance rates. As to what insurers should do to ease the pressure, they should reestablish the fact that their basic business is underwriting and servicing insurance, and that investment activities cannot carry the underwriting business activities. Second, they should help regulators establish healthy climates by providing as much solid data as possible and by helping regulators explain the financial situation to the public. Third, they should improve the speed and accuracy of their financial data, so that they are not making their present decisions on the basis of loss experience several years old. Fourth, insurers should continue to analyze and streamline their own operations to improve efficiency wherever possible and should investigate less costly ways of serving their policyholders. Fifth, insurers should seek to design their products to meet modern needs and to pare excess costs from the system under which insurance benefits are provided. Sixth, insurers should exercise restraint in making corrections in the marketplace and explore all alternatives before feeling compelled to reduce the amount

of business they write. He finally stated that in his opinion one of the big deficiencies in the North Carolina rating system other than the time lag is that in effect North Carolina has a state-wide rate structure whereas the loss experiences vary tremendously from section to section within the State.

The Chairman then appointed a subcommittee to investigate various matters, particularly the problems certain agents had been recently facing in the automobile insurance market. The subcommittee was chaired by Representative Beard and consisted of Senators Stallings and Marion and Representatives Collins, Campbell, and Edwards.

In 1967 Georgia converted from a "prior approval" to a "file and use" rating system, and Florida converted from a "prior approval" to a "use and file" rating system. Because both of these states once operated under the same rating system as is presently employed in North Carolina, and both converted to rating systems under consideration by the committee, it was necessary that first-hand accounts of their transitional experiences should be obtained by the committee. Therefore, on February 4 and March 10, 1976, Representative Beard and Senator Stallings travelled to Atlanta and Tallahassee respectively to discuss the Georgia and Florida experiences with the state insurance department officials, state legislators, and insurance representatives who were involved in the rating system transitions. Many findings were made which are relevant to any consideration towards changing North Carolina's present rating system.

Subsequent to the December meetings of the committee a number of insurance agents found their market for automobile insurance severely restricted or unavailable because insurance companies for whom these agents were writing automobile insurance were either ceasing to carry that line of insurance or were withdrawing from the North Carolina market, thereby leaving these agents unable to service the insurance needs of their clients. One possible avenue of relief explored by these agents was to submit to the N. C. Reinsurance Facility applications for company designation. However, in order to be designated to a company an agent is required to demonstrate that motorists could not readily obtain automobile liability insurance in the agent's area and this was not shown in any case, according to the Facility.

The subcommittee named in December 1975 conducted a hearing on April 15, 1976, at which time a considerable number of insurance agents were present to explain their situation regarding the automobile insurance problems they were experiencing. Representatives from the Department of Insurance, the N. C. Reinsurance Facility, and the Independent Insurance Agents of North Carolina, Inc., were also present. The subcommittee decided that the issue was too complex and there was not enough time to recommend any legislation for consideration during the 1976 Session. Discussion therefore turned to the possibility of a voluntary plan whereby companies would agree to take on these agents until corrective measures, either

remedial legislation or a change in the Facility's plan of operation, could be made. It was decided that an effort be made to set up a meeting between the full committee and representatives of the insurance companies.

On April 21, 1976, the full committee met with representatives of some but not all of the major automobile insurers to explore the possibility of a temporary solution until the situation could be diagnosed for corrective measures through legislative or administrative change. The companies represented indicated that they would be amenable to a voluntary plan that was temporary. The committee passed three resolutions: (1) a message to all insurance companies licensed to write automobile liability insurance in North Carolina asking them to join in the plan to provide agency plants to all qualified and deserving agents; (2) a message to the Commissioner of Insurance urging him to hold hearings on automobile liability insurance rates; and (3) a message to the Board of Governors of the N. C. Reinsurance Facility urging it to adjust its plan of operation and rules and regulations to the end that changes would be made whereby insurance companies would not suffer economic losses as a result of their participation in a voluntary marketing program.

#### FINDINGS

North Carolina remains one of only three states employing the cartel system whereby every insurance company belongs to a

state rating bureau for all automobile and property insurance lines. Under this system all companies have a single, state-wide rate set for them. Such a system denies the insurance consumer the benefits of price competition in times when the loss experience or the greater efficiency of insurance companies might allow them to sell a better product or the same product at a lower rate. The North Carolina bureau system was created in 1945 when all insurance companies sought the protection of cartels and feared the heat of competition. Its effect is to protect mediocrity and to stifle innovation and competition. A different climate exists today in North Carolina than that which existed when this state adopted its present rating laws in 1945 after the enactment of the McCarran-Ferguson Act of Congress. At that time emphasis was properly placed on preventing excessive rates by requiring prior approval of rates. The North Carolina system has produced an adversary relationship between industry and the regulator, and this atmosphere has further crippled the insurance markets in this state. In North Carolina the delay between filing and approval typically has been two years or longer; and even when finally approved, usually through the courts, the rates are not as effective as they could and should be. The regulator cannot, under the present rate-making mechanism in this state, effectively carry out his responsibility of protecting the public. The intent of the legislature was that the Commissioner and not the courts should approve rates.

The problem of insolvency of companies, not only in the insurance industry but in every other industry, is more prevalent today than ever before. Because of this the regulator should properly devote more of his time to assuring that companies that do business within his jurisdiction continue in business as responsible and solvent companies.

Insurance guaranty funds have effectively lulled us to sleep and have brought about a very subtle weakening of the character of state regulation of insurance. They have also provided a subconscious rationale for the failure of the regulator to take necessary but unpopular action in the form of rate increases, cease and desist orders, and needed legislation, on the premise that the public is protected by such guaranty funds.

Never before has the financial solvency of so many insurance companies been threatened to such an extent as now. Companies are selling their products at rates which have remained unchanged for as long as six or seven years and are being refused any type of rate increases, even when such filing is soundly supported by actuarial data and testimony. Many companies are in fact withdrawing entirely from unprofitable lines of insurance, leaving those remaining companies to take an even

greater share of losses.

By having companies withdraw from markets, insurance agents are put in a situation of finding themselves with fewer and fewer resources to secure the necessary coverages for their clients. North Carolina has never seen conditions in which agents more actively seek wider company representation in order to continue their markets than the present situation has created. The problem is that whereas in the past companies would competitively and aggressively compete for an agent's business, today the agent is finding all doors closed and no hope for an answer until adequate rates are restored.

In 1975 a review was made of all major fire and casualty filings regarding rates submitted to the department of insurance in the preceeding three years. It was found that a total of seventy-two (72) such filings were made. Of these 72 filings, the department had approved a grand total of eight with eight more in litigation at the time of the review. Many filings were disapproved without public hearings being held or were withdrawn by the filing agent after the department had taken no action whatsoever. This list of filings appears in Appendix D. More than 25 insurance companies have been declared to be either totally insolvent or in such a position that some formal conservatorship was necessary. 1974 was the highest underwriting

loss year in the history of the property and casualty insurance industry, and the losses for the first nine months of 1975 exceeded the results of 1974. During those first nine months of 1975 the property and casualty insurance industry was compiling a combined ratio of claims costs and expenses of 106.5%. This means, of course, that for every \$100.00 collected in premiums, insurance companies were forced to pay out \$106.50. Since companies are required to maintain a reasonable relationship between their policyholders' surplus and their premium volume, and since these losses must come from that surplus, current trends and results are certain to shrink the industry's ability to provide needed coverages.

Assuming a continuation of underwriting experience at a combined loss and expense ratio in the near vicinity of 105% (as it was in 1974) and a sluggish stock market, there is a distinct threat that a series of medium sized company failures or the collapse of one larger carrier could produce a classic demonstration of the domino theory in action. In 1975, after several bureau filings had been withdrawn for total want of action, the North Carolina Fire Insurance Rating Bureau "deemed approved" and put into effect a modest increase in rates for homeowners insurance rates. In spite of such factors that the average fire loss in North Carolina rose between 1969 and 1973

from \$964 to \$1,200, and that construction costs increased by 70% for the same period, the new "deemed" rate for this line of coverage was the first one available to the industry since July 1, 1966. Using the Consumer Price Index base year of 1967 as the starting point, through August of 1975 that overall index was up 62.8%. But, within that overall index, consideration must be given to those items that most directly affect the cost of automobile insurance. Auto repairs and maintenance went up 78.1%, medical care items went up 70.9%, semi-private hospital room and service charges went up 141%, and physicians' fees went up 71%. Against this background of cost increases there has not been a single increase in North Carolina's automobile insurance rates granted without appeals to the courts during the past five years. On July 21, 1975 the state bureau made a filing for increases in physical damage (collision) coverages. Although the hearing on the filing was not set until October 28, the word came down on September 18 that the increases had been denied.

When warranted price increases are denied in the face of increased, inflated claims, the net result is to subject a whole industry to price controls at a time when there are no effective cost controls. A regulator seldom can control costs the way he controls insurance prices. As expenses exceed income, insurers seek to reduce their exposure. To the extent that government

price controls force a business to lose money by selling its product below cost, price controls lead companies to venture capital in other, nonregulated industries. Diversion of capital and managerial talent away from a company's primary insurance business can be dangerous. When insurance rates are inadequate, companies will resort to highly selective underwriting in order to meet their costs and try to make underwriting profits. By selecting and retaining the better-than-average risks, the population in the residual markets increases.

Since insurance is protection, a promise to pay, and in many instances a necessity, it makes sense that certain regulatory powers, for example, guaranteeing the solvency of the insurer and a compliance with the policy contract, are very definitely in the public interest; but not the regulation of rates. The disciplines of price competition are much more effective in assuring the public fair value than are the disciplines of rate regulation. It's difficult for individual insurers to maintain an independent pricing posture in the face of lengthy and expensive rate regulatory procedures. Rate regulation doesn't guarantee either fair value or risk and cost responsiveness. It simply supplies rigidity. Pricing inflexibility is the number one cause of market shortages--in North Carolina, in the insurance business, and in every other form of free enterprise. The consumer needs

protection against the consequences of inadequate rates far more than against the temporary discomfort of higher premiums.

North Carolina needs a system of regulation that shifts the primary responsibility for the control of prices to that best of all arbiters -competition- and that leaves the Commissioner of Insurance the time and the energy to truly regulate: To protect consumers and the remainder of the industry from insolvent insurance companies, to demand the best in responsible policyholder and claims services from insurers operating in this state, to protect against premium charges that may be inadequate, excessive or unfairly discriminatory, and to assure that the people of North Carolina will have adequate access to essential insurance. Without a system of regulation and rate approval that is responsive to changing conditions, insurance companies are going to become even less interested in marketing their products in North Carolina and consumers here are going to find needed coverages more and more difficult to locate.

Property and casualty insurance is, where allowed to be, the most competitive big business in the country. 1974 statistics show that the largest company of all in this industry had only 6.6% of the total market. The top 10 companies have less than 37% and the top 20 only 53.6%. With literally hundreds of companies competing for business, and with no small group having

sufficient market penetration to control prices, the free enterprise system has proven time and again that nothing serves the consumer as well as competition.

Competition is working in twenty states with over two-thirds of the country's premium volume. California has had it since 1947, and study after study shows that consumers and insurers have both been well served. In 1969 New York went to competitive pricing of insurance, and a recent (1975) report by the Insurance Department of that state, "Cartels vs. Competition: A Critique of Insurance Price Regulations," contains some of the following conclusions:

"The experiment has been conducted. Five years of evidence is in. Although five years is an insufficient period on which to base long-term conclusions, the short-term results are clear. The law appears to have worked far better than the Department had predicted it would.

"The most dramatic evidence of success, of course, is the fact that property-liability insurance prices have stabilized and in some instances even declined under competitive rating, in sharp contrast to, and in spite of, escalating prices everywhere else in the economy, particularly for those prices underlying insurance costs. But, perhaps of even greater import, is that the cartels are dead. Insurance price decisions are now being reached on a company-by-company basis, as is evidenced by the fact that the rating bureaus -which only a few years ago dominated the insurance market -are now of de minimus importance.

"Other indications of success also exist. Insurance has in general been readily available. In fact, insurance availability has improved since the advent of competitive pricing. Competition appears to have had no adverse impact on the quality of insurance products, and several

indicators suggest that consumer satisfaction is now at a substantially higher level than it was during the availability crunch which marked the last days of prior approval. Finally, the Insurance Department, under competitive pricing, has recently undergone a major structural and functional reorganization designed to increase its efficiency and effectiveness, and has also instituted and implemented a number of important consumer protection programs.

"The competitive pricing law has proved its worth. Its performance has been demonstrably superior to that of its predecessor, the pro-cartel prior approval system."

In a California Insurance Department study of open competition in that state, the Department concluded that its insurance rating law was successful in producing rates that were not excessive, inadequate or unfairly discriminatory. This rating environment was accomplished through the open competition rating law which, at the same time, decreased regulatory expenses and facilitated insurance company flexibility and responsiveness.

In May, 1974, the National Association of Insurance Commissioners (NAIC) released a report prepared by its staff entitled "Monitoring Competition: A Means of Regulating the Property and Liability Insurance Business." Although this report was not intended to recommend a particular type of rating law, the NAIC staff did conclude that the evidence indicates that there is no significant difference in rate levels due to the rating law in states that have enacted open competition legislation and prior approval states. Moreover, the NAIC study concluded

that there is no evidence of differences in company solvency between prior approval or open competition states.

Studies continuously indicate that open competition rating does not result in excessive or inadequate rate levels and does not increase company insolvencies. And yet, competitive rating systems provide benefits for consumers, regulatory agencies and insurance companies which are not available under other rate regulatory systems.

To the consumer, open competition rating offers the advantages of a viable, more readily obtainable insurance market where an individual can shop for the best product to meet his insurance needs and perhaps pay a lower premium in doing so. Flexibility and rapidity in which an insurer can act are also advantageous to the public, because whether there are premium increases or decreases involved, the public benefits from the ability of insurers to act promptly in adjusting rates to the true cost of doing business. Under competitive pricing, property-liability insurance companies can address themselves quickly to change-making conditions by pricing the insurance product as their loss experience dictates. Reasonable rates are guaranteed by the forces of competition. This flexibility better enables insurance companies to grow and expand their services to meet the rapidly increasing needs of the nation's motoring population.

Competition has been the key to numerous innovations, such as uninsured motorist coverage, non-cancellation clauses, advance payments, rehabilitation programs, medical payment coverage, safe driver discounts, installment payment of premiums package policies, and many others. Competition provides the greatest pressure on firms to be efficient in administering their organization and in delivering the best possible services to consumers. It encourages responsive and flexible pricing and appropriate responses to changing economic conditions. It promotes the most efficient delivery of the greatest amount of service to the most consumers at the lowest possible cost.

Under competitive pricing, insurance departments continue to have a strong regulatory role, and all pertinent information regarding rates, policy forms and other statistical information is filed with them. The departments maintain the same rating standards of the prior approval law--that rates shall be neither excessive, inadequate nor discriminatory--and they retain power to hold hearings and make adjustments.

The price-setting function really belongs to management. One of the basic virtues of competitive-pricing laws is that they direct attention to insurance company managers as the people responsible for making the insurance rates rather than a governmental agency. This tends to reduce the political

pressures and frictions that sometimes accompany governmental rate control systems. The primary concerns of the state insurance departments should be to assure maximum competition consistent with insurance company solvency and equitable treatment of policyholders.

With competition in the market place--with hundreds of companies vying with each other for the available business--the public is assured of the lowest price, best service, latest innovation in product and in available market.

#### RECOMMENDATIONS

The Committee does not believe that a full open competition law would serve the best interests of the people of the state for the following reasons:

(1) An open competition law at this time would cause very substantial rate increases on all coverages because they are all currently depressed. The voters of the state would not be willing to accept the consequences of such a revolutionary type law.

(2) The "standard" policy forms which have been in effect for so long would immediately deteriorate. This has happened in the states which have adopted open competition. It is very difficult to have open competition on rates without having a comparable open competition concerning policy forms and coverages. Soon the insurance buying public would be unable to determine the best buy for the coverages needed. The agents who do business

and who must advise their customers in the state would prefer standard and uniform policy forms.

(3) Open competition would permit the irresponsible company with financial troubles to move quickly with inadequate rates. By the time the Insurance Department could obtain enough facts to suspend their license, the damage would be done.

In the future, open competition might be an option for North Carolina; however, the more evolutionary process of "use and file" is best at this time.

The Committee does believe that a "use and file" rate-making system would serve the best interests of the people:

(1) It provides a healthy competitive environment whereby companies can adjust their rates up or down to reflect their immediate past experience and future expectations.

(2) State regulation protects the consumer by focusing its efforts on policing the activities in an open market rather than on rate setting.

(3) It provides for more rapid adjustment of rates to prevailing conditions.

(4) It raises the total capacity and extent of coverage to meet demand, since rates will correspond to the risk involved and insurers will not be subject to continuing losses.

(5) It provides for greater stability of the industry, since established companies will be able to extend coverage where before often only marginal companies were willing to accept sub-standard risks.

(6) It provides for stability in pricing leading to reasonable rates, since it will be easier to provide incentives for safety and other innovative programs.

Certainly, the threat of having to roll back rates and refund money collected under a given rate will cause very responsible filings to be made. No company wants the expense of having to undo what it has done. It is expensive and embarrassing to rerate and refund money. The possibility of arbitrary rates being filed and immediately used seems to be extremely remote.

For the reasons enumerated in the foregoing paragraphs and in the Findings, the Committee recommends that the 1977 General Assembly enact legislation (1) to repeal the prior approval laws contained in Articles 13, 13A, 13B, and 25 of North Carolina General Statutes Chapter 58, (2) to adopt a use and file system of fire and casualty insurance ratemaking, and (3) to provide improved access by insurance guaranty associations to the assets of insolvent insurers, establish priorities for the distribution of assets of insolvent insurers, and provide a

premium tax offset in lieu of recoupment in rates for insurers paying assessments pursuant to guaranty association statutes.

The Committee's recommendations appear in bill form in Appendix E.



APPENDIX A

MEMBERS OF THE LEGISLATIVE  
RESEARCH COMMISSION: 1975-1976

Speaker James C. Green, Co-Chairman

President Pro Tempore John T. Henley, Co-Chairman

Senator Robert L. Barker

Senator Luther J. Britt, Jr.

Senator Cecil James Hill

Senator William D. (Billy) Mills

Representative Glenn A. Morris

Representative Liston B. Ramsey

Representative Hector E. Ray

Representative J. Guy Revelle

Representative Thomas B. Sawyer

Senator Willis P. Whichard

APPENDIX B

MEMBERS OF THE COMMITTEE ON FIRE AND CASUALTY INSURANCE RATE  
REGULATION

Representative J. Guy Revelle, Sr., Committee Chairman and  
Legislative Research Commission Member Responsible for  
Studies

Representative P. C. Collins, Co-chairman

Senator D. Livingston Stallings, Co-chairman

Representative R. D. Beard

Representative A. Hartwell Campbell

Senator Bobby Lee Combs

Representative James H. Edwards

Representative George M. Holmes

Mr. Paul Hoover

Mr. Wallace Hyde

Senator George W. Marion, Jr.

Representative H. Horton Rountree

Mr. Charles H. Venable

APPENDIX C

H. B. 296

CHAPTER 851

AN ACT TO DIRECT THE LEGISLATIVE RESEARCH COMMISSION TO  
STUDY VARIOUS MATTERS.

*The General Assembly of North Carolina enacts:*

**Section 1.** The Legislative Research Commission is directed to study the following issues, designing the individual study efforts as described in the other sections of this act:

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(6) Fire and casualty insurance rate regulation (H. 1214);

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**Sec. 7.** In its study of fire and casualty insurance rate regulation the Legislative Research Commission shall have the responsibility to make a thorough and comprehensive study of all aspects of fire and casualty insurance rate regulation in North Carolina and in other states in the Union. In conducting its studies the Legislative Research Commission shall evaluate and report on the system of prior approval rate making as used in this State and other states and shall compare the effectivensness and rate impact of the practices and procedures utilized in this State as compared with other states. In addition, the Legislative Research Commission shall evaluate and report on the rate impact of other systems of rate making including but not limited to (1) file and use rate making and (2) open competition rate making and (3) rate making utilizing the concept of return on invested capital. The Legislative Research Commission shall further evaluate the advantages and disadvantages of establishing an insurance commission consisting of three or more members with adequate supporting staff which shall be invested with the authority to determine and fix fire and casualty rates for use in North Carolina.

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APPENDIX D

MAJOR FIRE AND CASUALTY INSURANCE RATE FILINGS: 1972-1975

Date of Filing	Company or Agency Making Filing	Content of Filing	Action by Commissioner	Final Results
7/07/72	Insurance Services Office	Revision of Increased Limits Tables for Hospital Professional Liability Insurance	No action taken	Filing withdrawn 7/31/74
12/07/72	Compensation Inspection and Rating Bureau	Revised rates for "F" Classifications	No public hearing and no prior notice; filing was disapproved by Order dated 4/25/75	Pending before N. C. Ct. of App.
12/26/72	St. Paul Fire & Marine	Proposed 26.7% increase (amended 1/24/73 to 23.7% increase)	Approved 1/30/73	
12/28/72	N. C. Automobile Rate Administrative Office	Amendments to Experience Rating Plan	No action taken	
1/08/73	N. C. Fire Insurance Rating Bureau	Extended Coverage Rate Reduction of 23.3%	3/07/73 Request for Deemer Waiver	Filing withdrawn 5/22/73
1/08/73	N. C. Fire Insurance Rating Bureau	Homeowners Rate Increase of 14.8%	3/07/73 Request for Deemer Waiver	Filing withdrawn 6/22/73
3/01/73	Insurance Services Office	Dentist Professional Liability increase of 30%	Disapproved 5/08/73 without public hearing	
3/13/73	Insurance Services Office	Optometrist Professional Liability 100% increase	Disapproved 5/08/73 without public hearing	
6/13/73 (replaced 3/19/74) (supplemented 6/18/74)	Compensation Inspection and Rating Bureau	Revised Workmen's Compensation Insurance Rates (6/18/74 filing proposal overall increase of 11.8%)	Prehearing conference 11/01/74, 12/17/74, 1/10/75; public hearing held 2/12, 2/25, 2/26, 3/14, 4/18 and 5/5/75	Bureau sued Commissioner 9/16/75 In Re Commissioner's Failure to Act Filing disapproved by Order dated 10/14/75
6/29/73	N. C. Automobile Rate Administrative Office	Private Passenger Automobile Liability Insurance Rate Revision proposed increase of 2.3%	Hearings 1/22, 2/19, 2/26, 2/27, 3/05, 3/06, 3/08, 3/12, 3/13, 3/15, and 3/22/74 - Order entered reducing the rate by 14.5% bodily injury and 11.24% property damage	N. C. Ct. of App. reversed Commissioner's Order - N. C. Supreme Ct. affirmed decision of Ct. of App.
9/13/73	N. C. Automobile Rate Administrative Office	Revision of uninsured motorist coverage and rates	Hearing 9/18; ordered rate reduction; refused to approve amended coverages 9/24 to be effective 10/9/73	

APPENDIX D

Date of Filing	Company or Agency Making Filing	Content of Filing	Action by Commissioner	Final Results
9/21/73	N. C. Fire Insurance Rating Bureau	Extended coverage rate reduction of 22.6%	11/20/73 Request for Deemer Waiver	Filing withdrawn 5/31/74
9/21/73	N. C. Fire Insurance Rating Bureau	Fire insurance rate reduction of 2.1%	11/20/73 Request for Deemer Waiver	Filing withdrawn 5/31/74
10/15/73	N. C. Automobile Rate Administrative Office	Private Passenger Automobile Manual Amendment — Rule 20	No action taken	
10/30/73	Insurance Services Office	Rate increase of 50% for Physicians and Surgeons	2/02/74 hearing ordered for 7/18/74	Filing withdrawn 7/10/74 and new filing filed 10/24/74
11/21/73	Aetna Casualty & Surety	Physicians and Surgeons increase of 44.6%	Disapproved 12/14/73 with no public hearing	
2/15/74	Insurance Services Office	Revision of rates for boat class	Disapproved 5/03/74 with no public hearing	
3/01/74	N. C. Automobile Rate Administrative Office	Private Passenger Automobile Manual Amendment — Rule 4	No action taken	
4/03/74	Vigilant Insurance Company	Emergency Physicians and Surgeons Professional Liability	Filing returned without prejudice 8/18/75	
4/09/74	N. C. Fire Insurance Rating Bureau	Homeowners Rate increase of 20%	5/23/74 Request for Deemer Waiver	Filing withdrawn 1/24/75
5/14/74	St. Paul Fire & Marine	Rate increase of \$2.03¢ for physicians and surgeons	Hearings 7/18, 12/11, 12/12, 12/13, 12/16 and 12/18, 1974; temporary Order issued 12/19/74	
4/22/74	N. C. Automobile Rate Administrative Office	Revised Safe Driver Insurance Plan	Hearings 4/24, 5/17 and 6/10 — No decision by Commissioner	
5/22/74	N. C. Automobile Rate Administrative Office	Rate Filing — livery vehicles	No action taken	
6/05/74	N. C. Fire Insurance Rating Bureau	Automobile Physical Damage Insurance Rate increase of 14.7%	7/09/74 Request for Deemer Waiver	Filing withdrawn 1/23/75
6/18/74	Compensation Rating and Inspection Bureau	Workmen's Compensation Insurance Rate Adjustment	Filing Disapproved 10/14/75	
6/25/74	Aetna Casualty & Surety	Physicians and Surgeons increase of 130.3%	Hearings 7/18, 12/11, 12/12, 12/13, 12/16 and 12/18/74	

APPENDIX D

Date of Filing	Company or Agency Making Filing	Content of Filing	Action by Commissioner	Final Results
7/01/74	N. C. Automobile Rate Administrative Office	Annual Rate Filing – proposed increase of 3.2%	Hearing begun 11/25/74; Order entered reducing the rate level by approximately 13%	Matter pending in N. C. Ct. of App.
7/18/74	Insurance Services Office	General Liability OL&T increased limits and rate increase of 19.1%	No public hearings held – Filing disapproved 4/14/75	
7/18/74	Insurance Services Office	Optometrist Professional Liability 100% increase	No action taken	
8/01/74	Insurance Services Office	Increased Limits, Hospitals, Physicians and Surgeons	4/14/75 Filing disapproved without public hearing	
8/13/74	Insurance Services Office	Rate increase of 137.7% for Hospital Liability Insurance	No action taken	Filing withdrawn 6/18/75 and new filing filed 6/20/75
9/11/74	Insurance Services Office	Burglary Insurance Bank Vault rate increase and reduction in discounts	No public hearings held – filing disapproved 4/16/75	
9/23/74	N. C. Automobile Rate Administrative Office	Private Passenger Automobile Manual Amendment – Rule 21	No action taken	
9/23/74	Insurance Services Office	General Liability Boats 25% increase	No public hearings held – filing disapproved 5/03/75	
9/24/74	Insurance Services Office	General Liability M & C increased limits and rate increase of 19.1%	No public hearings held – filing disapproved 4/14/75	
10/01/74	Insurance Services Office	Lawyers Professional Liability 50% increase		Filing withdrawn 9/04/75
10/11/74	Compensation Inspection and Rating Bureau	Boat Building – State Act Coverage	No action taken	Matter pending
10/16/74	Shelby Mutual Insurance Company	Proposed elimination of 20% deviation from ISO rates	Disapproved 4/17/75 without public hearing	
10/22/74	Insurance Services Office	General Liability OL&T classes increase of 34.4%	No action taken	
10/23/74	Insurance Services Office	Farmer's Comprehensive Liability named insured medical payments increase of 90%	No action taken	

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<b>Date of Filing</b>	<b>Company or Agency Making Filing</b>	<b>Content of Filing</b>	<b>Action by Commissioner</b>	<b>Final Results</b>
10/24/74	Insurance Services Office	Rate increase of 200% for Physicians and Surgeons	Hearings 12/11, 12, 13 and 16, 18 1974 — No Order issued	Filing withdrawn 6/04/75 and refiled 6/20/75
11/15/74	N. C. Automobile Rate Administrative Office	Private Passenger Automobile Manual Amendment — Rule 11	No action taken	
12/04/74	N. C. Automobile Rate Administrative Office	Revised Commercial Automobile Classification Plan	No action taken	
12/06/74	Central Mutual Insurance Company	Psychologists Professional and Public Liability	No public hearing — filing returned without prejudice 8/18/75	
12/10/74	Vigilant Insurance Company	Psychiatrists, Neurologists and Employees Professional Liability	No public hearing — filing returned without prejudice 8/18/75	
12/20/74	Pacific Indemnity Company	Osteopathic Physicians and Surgeons Professional Liability increased rates	No public hearings — filing returned without prejudice 8/18/75	
1/06/75	N. C. Fire Insurance Rating Bureau	Extended coverage rate reduction of 19%	3/05/75 Request for Deemer Waiver 3/06/75 filing withdrawn by Bureau; 4/11/75 Order entered ordering 19% reduction of additional reduction of 3.4% effective 5/01/75; 4/30/75 supplemental Order staying additional reduction of 3.4% pending a hearing	Matter pending in N. C. Ct. of App.
1/06/75	N. C. Fire Insurance Rating Bureau	Fire Insurance rate increase of 10%	3/06/75 Request for Deemer Waiver	Filing withdrawn 3/06/75
1/10/75	N. C. Automobile Rate Administrative Office	Revised commercial automobile classification plan — supplement to 12/04/74 filing	No action taken	
1/24/75	N. C. Fire Insurance Rating Bureau	Automobile Physical Damage Insurance Rate Increase of 22.7%	3/24/75 Request for Deemer Waiver	Filing withdrawn 3/24/75
1/31/75	St. Paul Fire & Marine	"Claims Made" for Physicians and Surgeons rates and forms	Hearing 7/23/75 disapproved	

## Appendix D

<b>Date of Filing</b>	<b>Company or Agency Making Filing</b>	<b>Content of Filing</b>	<b>Action by Commissioner</b>	<b>Final Results</b>
2/10/75	N. C. Fire Insurance Rating Bureau	Homeowners rate increase of 16.2%	4/08/75 Request for Deemer Waiver	Filing withdrawn 4/10/75
3/11/75	N. C. Automobile Rate Administrative Office	Revision of liability insurance rates – commercial car and hazard I garage liability	No action taken	
4/16/75	N. C. Automobile Rate Administrative Office	Revision of Commercial Automobile Manual – Non-Owned Section	No action taken	
4/23/75	N. C. Automobile Rate Administrative Office	Revised Commercial Automobile Classification Plan – supplement to 12/04/74 filing	No action taken	
5/06/75	Aetna Casualty & Surety	Professional liability insurance rates for optometrists	No hearings – filing returned without prejudice 8/18/75	
5/08/75	Insurance Services Office	Revision in Physicians and Surgeons increase limits table	Hearing 10/21/75	
5/09/75	Insurance Services Office	Burglary Insurance rate increase	No hearings held – filing disapproved 5/22/75	
5/28/75	Insurance Services Office	Revision in Hospital Increased Limits Table	Hearing 10/21/75	
6/05/75	Compensation Inspection and Rating Bureau	Rate change endorsement	No action taken	Matter pending
6/20/75	Insurance Services Office	Rate increase for hospitals professional liability	Hearing 10/21/75	
6/20/75	Insurance Services Office	Rate increase for physicians and surgeons	Hearing 10/21/75	
6/27/75	N. C. Fire Insurance Rating Bureau	Homeowners Rate Increase of 16.2%	Letter dated 8/21/75 – Commissioner scheduled hearing for 10/29/75 – filing deemed approved as provided in G.S. 58-131.1 – Revision effective 10/08/75	

APPENDIX D

Date of Filing	Company or Agency Making Filing	Content of Filing	Action by Commissioner	Final Results
7/01/75	N. C. Automobile Rate Administrative Office	Private Passenger Auto Liability Rate Increase of 15.9%	Filing disapproved on 9/25/75	Pending before N. C. Ct. of App.
7/08/75	Insurance Services Office	Class Insurance Rate Increase of 9.8%	No action taken	
7/15/75	N. C. Automobile Rate Administrative Office	Proposed revised classification and sub-classification plans for private passenger autos — designed to comply with HB 28	Filing disapproved on 8/22/75 — Commissioner ordered Dept. Plan in effect 9/02/75	Pending before N. C. Ct. of App.
7/15/75	N. C. Automobile Rate Administrative Office	Proposed revised classification and sub-classification plans for motorcycles to comply with HB 28	Filing disapproved on 8/26/75 — Commissioner ordered Dept. Plan in effect on 9/02/75	Pending before N. C. Ct. of App.
7/21/75	N. C. Fire Insurance Rating Bureau	Automobile physical damage rate increase of 28.9%	Filing disapproved 9/18/75 — hearing called for 10/28/75	
7/24/75	N. C. Automobile Rate Administrative Office	Composite rating plan and retrospective rating plan D revisions	No action taken	
7/25/75	N. C. Automobile Rate Administrative Office	Revision of Commercial non-owned automobile endorsements and comprehensive automobile liability insurance coverage part	No action taken	
8/14/75	St. Paul Fire & Marine	Hospital "claims made" forms and rates	Hearing 9/22 and 23/75	Filing Allowed
9/08/75	Insurance Services Office	Increase in Dentists Professional Liability	No action taken	
9/09/75	St. Paul Fire & Marine	Physicians and Surgeons "claims made" forms and rates	Hearing 9/22 and 23/75	Filing Allowed

APPENDIX E

A BILL TO BE ENTITLED

AN ACT REPEALING PRESENT ARTICLE 13, ARTICLE 13A, AND ARTICLE 13B OF GENERAL STATUTES CHAPTER 58 RELATING TO THE FIRE INSURANCE RATING BUREAU AND FIRE INSURANCE RATE REGULATIONS AND TO CASUALTY INSURANCE RATING REGULATION; REPEALING ARTICLE 25 OF CHAPTER 58 RELATING TO REGULATION OF AUTOMOBILE LIABILITY INSURANCE RATES; PROVIDING A NEW AND COMPETITIVE METHOD OF RATE REGULATION OF FIRE AND CASUALTY AND AUTOMOBILE LIABILITY INSURANCE; AND PREVENTING MONOPOLY AND COLLUSION IN RATE MAKING.

The General Assembly of North Carolina enacts:

Section 1. Articles 13, 13A, 13B and 25 of General Statutes Chapter 58 are repealed in their entirety.

Sec. 2. Chapter 58 of the General Statutes is amended by adding a new Article 13C to read as follows:

"ARTICLE 13C

"Regulation of Insurance Rates.

"§ 58-131.34. Purposes.--The purposes of this Article are:

(1) To promote the public welfare by regulating rates to the end that they shall not be excessive, inadequate or unfairly discriminatory;

(2) To authorize the existence and operation of qualified rating organizations and advisory organizations and require that specified rating services of such rating organizations be generally

available to all admitted insurers;

(3) To encourage, as the most effective way to produce rates that conform to the standards of subsection (1) of this section, independent action by and reasonable price competition among insurers;

(4) To authorize cooperative action among insurers in the rate making process, and to regulate such cooperation in order to prevent practices that tend to bring about monopoly or to lessen or destroy competition; and

(5) To encourage the most efficient and economic marketing practices.

§58-131.35. Definitions.--As used in this Article:

(1) 'Advisory organization' means every person, other than an admitted insurer, whether located within or outside this State, who prepares policy forms or makes underwriting rules incident to but not including the making of rates, or rating plans or rating systems, or which collects and furnishes to admitted insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a ratemaking, capacity. No duly authorized attorney at law acting in the usual course of his profession shall be deemed to be an advisory organization.

(2) 'Commissioner' means the Commissioner of Insurance.

(3) 'Inland marine insurance' shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the Commissioner or as established by general custom of the business, as inland marine insurance.

(4) 'Member,' unless otherwise apparent from the context, means an insurer who participates in or is entitled to participate in the management of a rating, advisory or other organization.

(5) 'Rating organization' means every person, other than an admitted insurer, whether located within or outside this State, who has as his object or purpose the making of rates, rating plans, or rating systems. Two or more insurers which act in concert for the purpose of making rates, rating plans, or rating systems, and which do not operate within the specific authorizations contained in G.S. 58-131.45, 58-131.46, 58-131.47 and 58-131.48 , shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.

(6) 'Subscriber,' unless otherwise apparent from the context, means an insurer which is furnished at its request (a) with rates and rating manuals by a rating organization of which it is not a member, or (b) with advisory services by an advisory organization of which it is not a member.

(7) 'Willful' means in relation to an act or omission which constitutes a violation of this Article with actual knowledge or belief that such act or omission constitutes such violation and with specific intent to commit such violation.

"§58-131.36. Scope of application.--The provisions of this Article shall apply to all insurance on risks or on operations in this State, except:

(1) Reinsurance, other than joint reinsurance to the extent stated in G.S. 58-131.45;

(2) Any policy of insurance against loss or damage to or legal liability in connection with property located outside this State, or any motor vehicle or aircraft principally garaged and used outside of this State, or any activity wholly carried on outside this State;

(3) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;

(4) Accident, health, or life insurance;

(5) Annuities;

(6) Title insurance;

(7) Mortgage guaranty insurance; and

(8) Workmen's compensation and employers' liability

insurance written in connection therewith.

The provisions of this Article shall not apply to hospital service or medical service corporations, investment companies, mutual benefit associations, or fraternal beneficiary associations.

"§58-131.37. Rate Standards.--(a) Rates shall not be excessive, inadequate or unfairly discriminatory.

(b) Rates are not excessive if a reasonable degree of price competition exists at the consumer level with respect to the class of business to which they apply. It is presumed that a reasonable degree of price competition exists if there are a number of insurers actively engaged in the class of business there are rate differentials in that class of business.

(c) If such competition does not exist, rates are excessive if they clearly produce a long-run underwriting profit that is unreasonably high for the class of business.

(d) No rate shall be held to be inadequate unless (1) such rate is unreasonably low for the insurance provided and the continued use of such rate endangers the solvency of the insurer using the same, or unless (2) such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or if continued will have, the effect of destroying competition or creating a monopoly.

(e) A rate is not unfairly discriminatory in relation to

another in the same class if it reflects equitably the differences in expected losses and expenses. Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors, or like expense factors but different loss exposures, as long as the rates reflect the differences with reasonable accuracy. Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, franchise, or blanket policy.

§58-131.38. Rating methods.--In determining whether rates comply with the standards under G.S. 58-131.37, the following criteria shall be applied:

(1) Due consideration shall be given to past and prospective loss and expense experience within and outside this State, to catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to trends within and outside this State, to dividends or savings to be allowed or returned by insurers to their policyholders, members, or subscribers, and to all other relevant factors, including judgment factors.

(2) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such

standards may measure any difference among risks that have probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations. Such classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions.

(3) The expense provisions included in the rates to be used by an insurer may reflect the operating methods of the insurer and, as far as it is credible, its own expense experience.

§58-131.39. Filing of rates and supporting data.--(a) Except as to inland marine risks which by general custom of the business are not written according to manual rates and rating plans, every admitted insurer and every licensed rating organization, which has been designated by any insurer for the filing of rates under G.S. 58-131.41, shall file with the Commissioner all rates and all changes and amendments thereto made by it for use in this State within 30 days after they become effective.

(b) The Commissioner may require the filing of supporting data including:

(1) The experience and judgment of the filer, and to the extent the filer wishes or the Commissioner requires, of other

insurers or rating organizations;

(2) The filer's interpretation of any statistical data relied upon; and

(3) Descriptions of the methods employed in setting the rates.

(c) Upon written consent of the insured, stating his reasons therefor, a rate in excess of that provided by an otherwise applicable filing may be used on a specific risk, provided that it is filed with the Commissioner in accordance with subsection (a) of this section.

"§58-131.40. Filing open to inspection.--Each filing and supporting data filed under this Article shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge therefor.

"§58-131.41. Delegation of ratemaking and rate filing obligation.--(a) An insurer may itself establish rates based on the factors in G.S. 58-131.38 or it may use rates prepared by a rating organization, with average expense factors determined by the rating organization or with such modification for its own expense and loss experience as the credibility of that experience allows.

(b) An insurer may discharge its obligation under G.S.58-131.39

by giving notice to the Commissioner that it uses rates prepared by a designated rating organization, with such information about modifications thereof as are necessary to fully inform the Commissioner. The insurer's rates shall be those filed from time to time by the rating organization, including any amendments thereto as filed, subject, however, to the modifications filed by the insurer.

"§58-131.42. Disapproval of rates; interim use of rates.--

(a) If the Commissioner finds after a hearing that a rate is not in compliance with G.S. 58-131.37, he shall issue an order specifying in what respects it so fails, and stating when, following a reasonable period thereafter, such rate shall be deemed no longer effective. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

(b) Whenever a rate of an insurer is held to be unfairly discriminatory or excessive and deemed no longer effective by order of the Commissioner issued under subsection (a) of this section, such insurer shall have the option to continue to use such rate for the interim period pending judicial review of such order, provided such insurer shall place in an escrow account approved by the Commissioner the purported unfairly discriminatory or excessive portion of the premium collected during such

interim period. The court, upon a final determination, shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately, except that refunds to policyholders that are de minimis shall not be required.

"§58-131.43. Rating organizations.--(a) No rating organization shall provide any service relating to rates subject to this Article and no insurer shall utilize the service of such organization for such purpose unless the organization has obtained a license from the Commissioner.

(b) No rating organization shall refuse to supply any services for which it is licensed in this State to any insurer admitted to do business in this State and offering to pay the fair and usual compensation for the services.

(c) A rating organization applying for a license shall include with its application:

(1) A copy of its constitution, charter, articles of organization, agreement, association, or incorporation, and a copy of its bylaws, plan of operation, and any other rules or regulations governing the conduct of its business;

(2) A list of its members and subscribers;

(3) The name and address of one or more residents of this State upon whom notices, process affecting it, or orders of the Commissioner may be served;

(4) A statement showing its technical qualifications for acting in the capacity for which it seeks a license; and

(5) Any other relevant information and documents that the Commissioner may require.

(d) If the Commissioner finds that the applicant and the natural persons through whom it acts are qualified to provide the services proposed, and that all requirements of law are met, he shall issue a license specifying the authorized activity of the applicant. He shall not issue a license if the proposed activity would tend to create a monopoly or to lessen or to destroy price competition. Licenses issued pursuant to this section shall remain in effect until the licensee withdraws from the State or until the license is suspended or revoked.

(e) Any amendment to a document filed under this section shall be filed promptly.

(f) Every rating organization providing services in this State on the effective date of this Article may continue to provide services thereafter as a rating organization, subject to the provisions of this Article and pending its application to the Commissioner for a license to provide services as a rating organization, which application shall be made within 30 days after the effective date of this Article.

"§58-131.44. Advisory organizations.--(a) No advisory

organization shall conduct its operations in this State unless and until it has filed with the Commissioner:

(1) a copy of its constitution, articles of incorporation, agreement, or association, and of its bylaws, or rules and regulations governing its activities, all duly certified by the custodian of the originals thereof;

(2) a list of its members and subscribers; and

(3) the name and address of a resident of this State upon whom notices, process affecting it, or orders of the Commissioner may be served.

(b) Every such advisory organization shall notify the Commissioner promptly of every change in its constitution or its articles of incorporation, agreement, or association, and of its bylaws, rules and regulations governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this State designated by it upon whom notices or orders of the Commissioner or process affecting such organization may be served.

(c) No such advisory organization shall engage in any unfair or unreasonable practice with respect to such activities.

"§58-131.45. Joint underwriting and joint reinsurance organizations.--(a) Every group, association, or other organization of insurers which engages in joint underwriting or joint

reinsurance through such group, association, or organization, or by standing agreement among the members thereof, shall file with the Commissioner:

(1) a copy of its constitution, articles of incorporation, agreement, or association, and bylaws

(2) a list of its members; and

(3) the name and address of a resident of this State upon whom notices, process affecting it, or orders of the Commissioner may be served.

(b) Every such group, association or other organization shall notify the Commissioner promptly of any change in the documents required to be filed with him.

(c) If after a hearing, the Commissioner finds that any activity or practice of any such group, association, or other organization is unfair, unreasonable, or otherwise inconsistent with the provisions of this Article, he may issue a written order specifying in what respects such activity or practice is unfair, unreasonable, or otherwise inconsistent with the provisions of this Article, and requiring the discontinuance of such activity or practice.

"§58-131.46. Insurers authorized to act in concert.--

Subject to and in compliance with the provisions of this Chapter authorizing insurers to be members or subscribers of rating or

advisory organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research.

"§58-131.47. Insurers authorized to act in concert when admitted insurers with common ownership or management or on matters relating to co-surety bonds.--With respect to any matters pertaining to the making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research, two or more admitted insurers having a common ownership or operating in this State under common management or control, are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer; and to the extent that such matters relate to co-surety bonds, two or more admitted insurers executing such bonds are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer.

"§58-131.48. Agreements to adhere.--No insurer shall assume any obligation to any person, other than a policyholder or other insurers with which it is under common control or management or is a member of a joint underwriting or joint re-insurance organization, to use or adhere to certain rates or rules; and no other person shall impose any penalty or other adverse consequence for failure of an insurer to adhere to certain rates or rules. This section shall not apply to apportionment agreements among insurers approved by the Commissioner pursuant to G.S. 58-131.52: Provided, however, that members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of such organizations either consistently or intermittently. The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, use either consistently or intermittently, the rates or rating systems made or adopted by a rating organization, or the underwriting rules or policy or bond forms prepared by a rating or advisory organization, shall not be sufficient in itself to support a finding that an agreement to so adhere exists, and it may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement.

"§58-131.49. Exchange of information or experience data;

consultation with rating organizations and insurers.--Rating organizations licensed pursuant to G.S. 58-131.43 and admitted insurers are authorized to exchange information and experience data between and among themselves in this State and with rating organizations and insurers in other States and may consult with them with respect to ratemaking and the application of rating systems.

"§58-131.50. Recording and reporting of experience.-- The Commissioner shall promulgate or approve reasonable rules, including rules providing statistical plans, for use thereafter by all insurers in the recording and reporting of loss and expense experience, in order that the experience of such insurers may be made available to him. No insurer shall be required to record or report its experience on a classification basis inconsistent with its own rating system. The Commissioner may designate one or more rating organizations to assist him in gathering such experience and making compilations thereof.

"§58-131.51. Examination of rating organizations and joint underwriting and joint reinsurance organizations.--The Commissioner shall, at least once every five years, make or cause to be made an examination of each rating organization licensed pursuant to G.S. 58-131.43 and each advisory organization licensed pursuant to G.S. 58-131.44 and he may, as often as he may deem

it expedient, make or cause to be made, an examination of each group, association, or other organization referred to in G.S. 58-131.45. Such examination shall only relate to the activities conducted pursuant to this Article and solely to the organizations licensed under this Article. The reasonable costs of any such examination shall be paid by the organization examined upon presentation to it of a detailed account of such cost. The officers, manager, agents and employees of any such organization may be examined at any time under oath and shall exhibit all books, records, account, documents or agreements governing its method of operation. In lieu of any such examination, the Commissioner may accept the report of an examination made by the insurance advisory official of another State, pursuant to the laws of such State.

"§58-131.52. Apportionment agreements among insurers.-- Agreements may be made among insurers with respect to equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance, such agreements and rate modifications to be subject to the approval of the Commissioner.

"§58-131.53. Request for review of rate, rating plan,

rating system or underwriting rule.--Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or rating organization may request the insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative, and shall be in writing. If the request is not granted within 30 days after it is made, the requestor may treat it as rejected. Any person aggrieved by the action of an insurer or rating organization in refusing the review requested, may file a written complaint and request for hearing with the Commissioner, and shall specify the grounds relied upon. If the Commissioner has information concerning a similar complaint he may deny the hearing. If the Commissioner believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing. If the Commissioner finds that the complaint charges a violation of this Article and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in G.S. 58-131.54.

"§58-131.54. Hearing and judicial review.--(a) Any insurer, person, or organization to which the Commissioner has directed an order or decision made without a hearing may, within thirty

days after notice to it of the order or decision, make written request to the Commissioner for a hearing thereon. The Commissioner shall hear such party or parties within 20 days after receipt of such request and shall give not less than 10 days written notice of the time and place of hearing. Within 15 days after such hearing, the Commissioner shall affirm, reverse, or modify his previous action, and specify his reasons therefor. Pending such hearing and decision thereon, the Commissioner may suspend or postpone the effective date of his previous action.

(b) Any order or decision of the Commissioner shall be subject to judicial review as provided in G.S. 58-9.3.

"§58-131.55. Penalties. --(a) The Commissioner may, if he finds that any person or organization has violated any provision of this Article, impose a penalty of not more than \$500 for each such provision violated; but if he finds such violation to be willful, he may impose a penalty of not more than \$5,000 for each such provision violated. Such penalties may be in addition to any other penalty provided by law.

(b) The Commissioner may suspend the license of any rating organization or insurer that fails to comply with an order of the Commissioner within the time limited by such order, or within any extension thereof that the Commissioner may grant. The Commissioner shall not suspend the license of any rating

organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or, if an appeal has been taken, until such order has been affirmed. The Commissioner may determine when a suspension of a license shall become effective, and such suspension shall remain in effect for the period fixed by him unless he modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded, or reversed.

(c) No penalty shall be imposed and no license shall be suspended or revoked except upon a written order of the Commissioner stating his findings, made after a hearing held upon not less than 10 days written notice to such person or organization, and specifying the alleged violation.

"§58-131.56. Policy forms.--Except for fidelity, surety, or guaranty bonds and except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, no policy form applying to insurance on risks or operations covered by this Article shall be delivered or issued for delivery unless it has been filed with the Commissioner and either he has approved it, or 30 days have elapsed and he has not disapproved it as ambiguous, misleading, deceptive or contrary to law.

"§58-131.57. Existing rates, rating systems, territories,

classifications and policy forms.--Rates, rating systems, territories, classifications, and policy forms lawfully in use on the effective date of this Article may continue to be used thereafter, notwithstanding any provision of this Article.

"§58-131.58. Payment of dividends not prohibited or regulated; plan for payment into rating system.--Nothing in this Article shall be construed to prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers. A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers shall not be deemed a rating plan or system."

Sec. 3. If any provision of this act or the application thereof to any person or circumstances is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or application which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 4. This act shall become effective ninety days after ratification.

A BILL TO BE ENTITLED

AN ACT TO PROVIDE IMPROVED ACCESS BY INSURANCE GUARANTY ASSOCIATIONS TO THE ASSETS OF INSOLVENT INSURERS, TO ESTABLISH PRIORITIES FOR THE DISTRIBUTION OF ASSETS OF INSOLVENT INSURERS, AND TO PROVIDE A PREMIUM TAX OFFSET IN LIEU OF RECOUPMENT IN RATES FOR INSURERS PAYING ASSESSMENTS PURSUANT TO GUARANTY ASSOCIATION STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-155.11(f), as it appears in the 1975 Replacement Volume 2B of the General Statutes, is amended by redesignating the existing subsection as "(g)" and inserting a new subsection "(f)" to read as follows:

"(f) (1) Within one hundred twenty days of a final determination of insolvency and order of liquidation by a court of competent jurisdiction of this State, the receiver shall make application to the court for approval of a proposal to disburse assets out of such company's marshalled assets, from time to time as such assets become available, to the North Carolina Insurance Guaranty Association and the North Carolina Life and Accident and Health Guaranty Association and any similar organizations in another State. The North Carolina Insurance Guaranty Association and the North Carolina Life and Accident and Health Insurance Guaranty Association and any similar organizations in

other States shall hereinafter be referred to collectively as the "Associations."

(2) Such proposal shall at least include provision for:

a. Reserving amounts for the payment of expenses of administration and claims falling within the priorities established in G.S. 58-155.27(b)(1), (2), and (3) as now or hereafter amended;

b. Disbursement of the assets marshalled to date and subsequent disbursements of assets as they become available;

c. Equitable allocation of disbursements to each of the Associations entitled thereto;

d. The securing by the receiver from each of the Associations entitled to disbursements pursuant to this subsection an agreement to return to the receiver such assets previously disbursed as may be required to pay claims of secured creditors and claims falling within the priorities established in G.S. 58-155.27 as now or hereafter amended in accordance with such priorities. No bond shall be required of any such Association; and

e. A full report to be made by the Association to the receiver accounting for all assets so disbursed to the Association, all disbursements made therefrom, any interest earned by the Association on such assets and any other matter as the court may direct.

(3) The receiver's proposal shall provide for disbursements

to the Associations in amounts at least equal to the payments made or to be made thereby for which such Associations could assert a claim against the receiver, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such payments made or to be made by the Associations then disbursements shall be in the amount of available assets.

(4) The receiver's proposal shall, with respect to an insolvent insurer writing life, health insurance or annuities, provide for disbursements of assets to the North Carolina Life and Accident and Health Insurance Guaranty Association or to any other entity or organization reinsuring, assuming or guaranteeing policies or contracts of insurance under the provisions of the North Carolina Life and Accident and Health Insurance Guaranty Association Act.

(5) Notice of such application shall be given to the Associations in and to the Commissioners of insurance of each of the States. Any such notice shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, at least thirty days prior to submission of such application to the court."

Sec. 2. G.S. 58-155.27(a), as it appears in the 1975 Replacement Volume 2B of the General Statutes, is amended by

adding at the end thereof a new sentence to read as follows:

"Such priority shall be in lieu of any other similar priority which may be authorized by law as to the wages or compensation of such employees."

Sec. 3. G.S. 58-155.27(b), as it appears in the 1975 Replacement Volume 2B of the General Statutes, is rewritten to read as follows:

"(b) The priorities of distribution of general assets in a proceeding under this Article shall be as follows:

(1) Expenses of administration;

(2) Compensation of employees as provided in subsection (a) of this section;

(3) Claims for federal, state and local taxes which are secured by liens perfected prior to the commencement of delinquency proceedings;

(4) Claims by policyholders, beneficiaries, and insureds, and liability claims against insureds, which claims are arising from, within the coverage of, and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company, and claims of the North Carolina Insurance Guaranty Association and the North Carolina Life and Accident and Health Insurance Guaranty Association and any similar organizations in another state;

(5) All claims not falling within any other priority under

this section including unsecured claims of the federal or any state or local government;

(6) Claims of guarantee fund certificate holders, guarantee capital shareholders and surplus note holders; and

(7) Proprietary claims of shareholders, members, or other owners."

Sec. 4. G.S. 58-155.45(4), as it appears in the 1975 Replacement Volume 2B of the General Statutes, is amended by deleting the period after the word "otherwise" and inserting in lieu thereof a colon and by adding thereafter the following:

"Provided, that a claim for any such amount asserted against a person insured under a policy issued by an insurer which has become an insolvent insurer, which, if it were not a claim by or for the benefit of a reinsurer, insurer, insurance pool, or underwriting association, would be a "covered claim," may be filed directly with the receiver of the insolvent insurer; but in no event may any such claim be asserted in any legal action against the insured of such insolvent insurer. In addition, "covered claim" shall not include any claim filed with the Association subsequent to the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer."

Sec. 5. G.S. 58-155.45(5)(ii), as it appears in the 1975

Replacement Volume 2B of the General Statutes, is rewritten to read as follows:

"(ii) determined to be insolvent and ordered liquidated by final order of a court of competent jurisdiction."

Sec. 6. G.S. 58-155.48(a)(3), as it appears in the 1975 Replacement Volume 2B of the General Statutes, is amended by redesignating the existing sub-subdivision as "(a)(3)a" and adding new sub-subdivisions "b," "c," "d," and "e" to read as follows:

"b. The Association shall issue to each insurer paying an assessment under this Article a certificate of contribution, in a form prescribed by the Commissioner, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue.

"c. A certificate of contribution issued to a member company shall be offset against its premium tax liability in the amount of twenty percent of the assessment for the year of assessment and twenty percent of the assessment per year for each of the succeeding four years. A member shall at its option have the right to show a certificate of contribution as an asset in the form approved by the Commissioner at percentages of the original face amount approved by the Commissioner, for calendar years as follows:

1. one hundred percent for the calendar year of issuance;  
and

2. eighty percent for the first calendar year after the  
year of issuance; and

3. sixty percent for the second calendar year after the  
year of issuance; and

4. forty percent for the third calendar year after the  
year of issuance; and

5. twenty percent for the fourth calendar year after the  
year of issuance; and

6. zero percent for the fifth calendar year after the year  
of issuance, and thereafter.

"d. Any sums acquired by refund, pursuant to G.S. 58-155.48  
(b)(6), from the Association which have theretofore been written  
off by contributing insurers and offset against premium taxes as  
provided above, and is not then needed for purposes of this  
Article, shall be paid by the Association to the Commissioner  
and by him deposited with the state treasury for credit to the  
general fund of this State.

"e. To the extent amounts have been written off under  
G.S. 58-155.48(a)(3)c, the provisions of G.S. 58-155.56 shall  
not apply."

Sec. 6. If any provision of this act or the application

thereof to any person or circumstances is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or application which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 7. This act shall become effective upon ratification.



